

mobile radio systems and preserve the frequency allocations made for use by these Critical Infrastructure Industries.

I. BACKGROUND

1. API is a national trade association representing approximately 350 companies involved in all phases of the petroleum and natural gas industries, including exploration, production, refining, marketing and transportation of petroleum, petroleum products and natural gas. Among its many activities, API acts on behalf of its members as spokesperson before federal and state regulatory agencies. The API Telecommunications Committee is one of the standing committees of the organization's Information Systems Committee. The Telecommunications Committee evaluates and develops responses to state and federal proposals affecting telecommunications facilities used in the oil and gas industries.

2. API joined UTC and AAR in filing the subject Petition, because the two-pool mechanism adopted by the Commission for the allocation and licensing of the Private Land Mobile Radio ("PLMR") spectrum below 800 MHz places critical operational and public service communications in jeopardy.^{1/} Growing demands from

^{1/} Under the two-pool mechanism established in the Second Report and Order (SR&O) in PR Docket No. 92-235, only traditional public safety agencies are eligible for frequencies

commercial interests and non-essential business services for spectrum allocated to the Industrial/Business Pool have resulted in interference to existing communications systems of Critical Infrastructure Industries. Several examples have been cited in the Petition and in comments filed by API and UTC where interference to an important communications system was caused by the licensing of a non-public service entity near a critical infrastructure industry.^{2/}

II. REPLY

3. API understands that other users of private wireless radio rely on their communications systems to ensure the safety of their employees, the public and the environment.^{3/} In no way does API by its support for the creation of a Public Service Pool slight the importance of the contributions of other industrial users to the economy

in the Public Safety Pool. All other entities must apply for use of frequencies in the Industrial/Business Pool.

^{2/} See Petition at pp. 9-11; API Statement in Support at pp. 3-4; UTC Comments at pp. 7-9.

^{3/} See Industrial Telecommunications Association, Inc. ("ITA"), the Council of Independent Communications Suppliers ("CICS"), the Taxicab & Livery Communications Council ("TLCC"), the Telephone Maintenance Frequency Advisory Committee ("TELFAC") and USMSS, Inc. (collectively, "Joint Commenters") Comments at pp. 12-13 (stating that other industries using private wireless systems, "provide the public with a plethora of goods and services that are 'essential' to the health, welfare, and prosperity of the American public."); Personal Communications Industry Association, Inc. ("PCIA") Comments at pp. 11-23.

and well-being of Americans. Nor should its advocacy for the new service be interpreted to even suggest that the mobile radio communication systems of other users do not play a significant role in the protection of life and property. Many industrial users that rely on private mobile radio systems to support their operations also use these facilities to support important safety functions. However, the Critical Infrastructure Industries provide essential, elemental services and products to individuals and companies and are expected to do so safely, quickly and efficiently. Furthermore, the nature of Critical Infrastructure Industry operations demands that equipment or employees be able to immediately alert the proper parties of an emergency or potential situation that threatens life, limb, and property. For example, in situations such as a pipeline leak or rupture, it is absolutely imperative that the company's private radio system deliver the message to shut off a valve on the first transmission attempt. In the absence of a reliable communications system that is capable of delivering critical instructions immediately, the result may be the loss of life and property. While communications carried on other systems may be very important, they do not carry the same level of immediacy. As noted by UTC, Congress has recognized the vital role of the Critical Infrastructure Industries and has urged the Commission to protect the communications systems of these industries.^{4/}

^{4/} UTC Comments at pp. 3-7.

4. The Critical Infrastructure Industries proposed a reasonable solution to the interference and spectrum scarcity problems that are unnecessarily challenging Critical Infrastructure Industries entities. The Critical Infrastructure Industries' proposal is not arbitrary or unjustified as some parties claim.^{5/} Eligibility for the proposed Public Service Pool was based on the 1997 Budget Act's definition of "public safety radio service", which, as described in the 1997 Budget Act's accompanying House Report, would include power, petroleum and railroad service eligibles^{6/} which are not already protected in the Public Safety Pool. In a recently introduced bill, Congressional recognition was given again to the need for electric, gas and water utilities and natural gas and petroleum pipelines to have reliable radio communications which "are essential to the protection of the nation's critical infrastructure and public safety."^{7/}

5. The Critical Infrastructure Industries proposed to maintain its frequency coordination protections by continuing to permit only the former railroad, power and petroleum services coordinator to coordinate frequencies formerly designated exclusively to its respective service. The redistribution of channels currently allocated to the Industrial/Business Pool among the Industrial/Business Pool and the new Public Service

^{5/} MRFAC, Inc. Comments at p. 4; PCIA Comments at p. 24; Joint Commenters Comments at p. 12..

^{6/} H. Rpt. 105-49, *Congressional Record*, p.H6173 (June 29, 1997).

^{7/} H.R. 4813, 105th Cong. 2d Session, introduced October 12, 1998.

Pool was based on the current usage patterns, because the proportion of call signs best reflects the actual and anticipated needs of users on these channels and minimizes disruption to either the Public Service or Industrial/Business Pools. Accordingly, the new Public Service Pool would include (1) those frequencies used exclusively by the power, petroleum and railroad radio services and (2) a proportion of shared frequencies based on pre-refarming usage levels. The Critical Infrastructure Industries calculated that the percentage of the total channel usage by the power, petroleum and railroad licensees was: 61% low band, 8% 70 MHz band, 52% high band and 60% UHF frequencies. To the extent that the Commission ultimately decides that other uses of the wireless spectrum justify inclusion of other entities in the Public Service Pool, additional channel assignments should be included in the pool allocation to accommodate an expanded universe of eligibles.

6. For those Public Service eligibles who would continue to operate existing systems assigned channels that remain in the Industrial/Business Pool, the Critical Infrastructure Industries urged the Commission to implement protected service contours to protect these systems from harmful interference. The Critical Infrastructure Industries determined that because the Industrial/Business Pool would continue to be available to a wide range of users and subject to coordination by any recognized frequency coordinator, the protected service contours would be necessary to reduce the risk of interference to or encroachment upon the incumbent systems of Public Service licensees. The use of

protected service contours to protect existing petroleum, power and railroad systems is supported by ITA, CICS, TLCC, TELFAC and USMSS, Inc.^{8/} Accordingly, API urges the Commission to require the concurrence of the appropriate Public Service Radio Pool coordinator for the grant of any application that seeks authority to share any channel currently licensed to a Public Service eligible where, in the 450-470 MHz band, the applicant's 21 dBu contour would impinge upon the incumbent's 39 dBu contour; in the 150-174 MHz band, the applicant's 19 dBu contour would encroach on the incumbent's 37 dBu contour; and for the channels below 50 MHz, the applicant's 12 dBu contour would encroach on the incumbent's 30 dBu contour.

III. CONCLUSION

7. Enough time has elapsed since the Commission implemented its rules to consolidate the private radio services into two service pools to realize that the rules do not provide the degree of protection required by the Critical Infrastructure Industries. The public's safety already is threatened by inadequate safeguards. In light of the continuing threat of interference and encroachment by new business and commercial systems, API urges the Commission to respond immediately to the Critical Infrastructure Industries' Petition to create a new Public Service Pool in the PLMR bands below 800 MHz. The

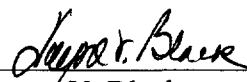
^{8/} Joint Commenters at p. 17.

dangers to the critical communication functions of public service entities are no longer speculative, they are real. API urges the Commission to take action now that responds fully to the proposals made by UTC, API and AAR in the Petition for Rule Making before any more lives and property are needlessly put at risk.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute respectfully urges the Federal Communications Commission to act in a manner fully consistent with the views expressed herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Patt Meyer, a secretary with the law firm of Keller and Heckman LLP, do hereby certify that a copy of the foregoing Statement of the American Petroleum Institute in Support of the Joint Petition for Rule Making Filed by UTC, the Telecommunications Association, the American Petroleum Institute and the Association of American Railroads was served this 7th day of January, 1999 on the following persons by first class United States mail, postage prepaid:

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